IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.827 OF 2006

Shree Mahalaxmi Construction Corporation .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

Mr.N.V.Walawalkar, Senior Advocate with
Mr.A.M.Kulkarni for petitioner
Mr.D.A.Patil, A.G.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 22nd February 2006.

P.C.

. Heard Mr.Walawalkar, learned Senior Counsel for petitioner - original plaintiff in Special Civil Suit No.202 of 1994 and Mr.Patil, A.G.P. for respondent original defendants.

2. Petitioner plaintiff instituted this suit claiming a decree against the State and other officers in the sum of Rs.2,83,08,850/- with

interest. It was preferred in the Court of Civil Judge, Senior Division, Sangli. The suit was instituted by petitioner plaintiff, which is partnership firm registered under the Partnership Act, through its partner Mr.D.D.Shinde, carrying on his business at Kolhapur. While it is true that the suit is filed in the year 1994 and was pending, it is dismissed in default. Petitioner - plaintiff applied for restoration after the order of dismissal was passed on 27th April 2004 and in the restoration application he has given reasons as to why the application was made for restoration and how the restoration is not on account of any fault on the part of petitioner - plaintiff. It is pointed out that petitioner plaintiff engaged one H.C.Hartalkar, advocate from Pune as his advocate. There are other Advocates who are engaged by him, who were practising at Sangli. The joint vakalatnama was given and it appears from the record that the appearance came to be withdrawn by the Advocate

without any intimation to the petitioner plaintiff. There is a specific averment to that fact in para 5.7 and 5.8 of the application for restoration. It is in these circumstances that the application for restoration was made.

3. The trial court after recording deposition of parties and considering the reply thereto has dismissed the application holding that no sufficient cause is made out for restoration of the suit.

4. In the light of the specific averments in the application for restoration and further the same having been substantiated by petitioner plaintiff stepping into witness box, there is no question of presumtion of notice addressed by the Advocate having reached petitioner plaintiffs and they being aware of its withdrawal. It is also pertinent to note that the application for withdrawal preferred by the Advocate in the

absence of petitioner's representative is merely taken on record by the trial court and no order either discharging him or permitting him to withdraw has been passed thereon. Communication of the said Advocate appears to have been despatched not to the address where the petitioner carries on his business but at a different place and address at Pune. Mr.Walawalkar has pointed out to me from the extract of the Registrar of Firms that the registered office of petitioner plaintiff is in Kolhapur and not at the place where the communication was allegedly despatched. In these circumstances and more particularly in the absence of any proof being tendered that petitioner plaintiff is aware of the withdrawal of appearance by his Advocate, the trial court should have taken a liberal view of the matter and restored the suit to file for disposal on merits and in accordance with law.

5. The State Govrnment and its officers ae party defendants and it is rather surprising that an application for restoration made in these circumstances has been contested by the defendants and it was argued for a period of two years before the Court below. The parties would have been well advised to have got the suit restored and disposed of in the period during which these proceedings were pending.

6. Restoration application is, therefore, allowed. Order under challenge is set aside. Suit is restored to the file of trial court for disposal on merits and in accordance with law. Parties to appear before trial Judge on 13th March 2006 and the learned Judge shall thereupon fix a schedule of dates for disposal of the suit which shall be concluded as expeditiously as possible.

(S.C.DHARMADHIKARI, J)